

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER WAYNE ROBERTSON,

Defendant and Appellant.

F061058

(Super. Ct. No. 8240)

**ORDER MODIFYING  
OPINION [NO CHANGE IN  
JUDGMENT]**

It is ordered that the opinion filed herein on August 21, 2012, be modified as follows:

1. On page 2, the first sentence of the first full paragraph, the word “Robinson” is changed to “Robertson.”
2. On page 3, footnote 3 is deleted, which will require renumbering of all subsequent footnotes.
3. On page 10, the fourth sentence in the second full paragraph, the word “church” is changed to “garage” so that the sentence reads:

Later, she saw appellant and the woman coming from the garage.

4. On page 23, the fifth and sixth sentences of the second full paragraph, beginning “The jury was instructed” are deleted and the following sentences are inserted in their place:

The jury was instructed on this point as follows: “The move must have increased the risk of physical or psychological harm to the person present of the sexual penetration [*sic*].” This sentence is not substantively inconsistent with section 209, subdivision (b)(2) or the holdings of *Martinez* and *Vines*.

5. On page 24, the second and third sentences of the third full paragraph, beginning “T.N. said she” are deleted and the following sentences are inserted in their place:

T.N. said she was 17 years old in February 1974. On February 17, 1974, she and Henry Hernandez were hitchhiking on Highway 1.

6. On page 25, the third full quoted paragraph, beginning “As to remoteness” is deleted and the following quoted paragraph is inserted in its place:

“As to remoteness, certainly an alleged conduct occurring 35 years ago can be deemed to be remote. But then can be balanced out by the similarities of the offenses. And these are the similarities that this Court finds. That the victim in the present case was allegedly summoned to the defendant’s house or [garage] under false pretenses. In the prior conduct the defendant allegedly turned his car around to pick up the victim while they were hitchhiking. The victim in the present case was allegedly locked or placed in a closed building by the defendant. In the prior conduct the victim was kept in a car after having her other passenger, the other hitchhiker, step out and the defendant driving away. In the present case the victim was in fear of the defendant. That is set forth in the moving papers. And in the prior incident the victim allegedly told -- was told by the defendant that she would be killed if she did anything. In both situations the defendant allegedly separated the victims from their companions that they were with at the time. As to the consumption of time, based upon the testimony of the prior alleged victim, the Court does not find that there would be an undue consumption of time by allowing this evidence in. The Court does not see any minitrial occurring based upon the testimony that I heard today.

Except for the modifications set forth, the opinion previously filed remains unchanged.

There is no change in the judgment.

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LEVY, Acting P.J.

WE CONCUR:

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GOMES, J.

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DETJEN, J.